IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.109 OF 2004

M/s.Shilpa Shares and Securities. ... Petitioner.

vs.

1.Shri.Minesh Chandrakant Shah & others. .... Respondents.

Mr.M.D.Angal, for Petitioner.

Mr.Ajay Khandhar i/b. Ajay Khandhar & Co., for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 18th July,2005

P.C.:-

1. The Arbitral Tribunal of the National Stock Exchange has held in the Award impugned in the petition that the reference is barred by the Law of Limitation. The claim of the petitioner was that the starting point of the limitation is 6.9.2002 when it demanded the amount. The Arbitral Tribunal has held that the date of demand of the amount will not give rise to cause of action, and therefore, has held that the cause of action had accrued earlier, and therefore, the

reference was not made within a period of six months which is a period of limitation laid down in the Bye-laws of the National Stock Exchange. The learned Counsel for petitioner relies on the provisions of Section 21 of the Arbitration & Conciliation Act,1996 to contend that the Arbitrator has committed error in holding that the cause of action does not arise on the date on which the amount is demanded. Now the settled law is that the cause of action for making a reference to the Arbitrator arises at the same time when had there been no arbitration clause, the cause of action for filing a suit would have arisen. The cause of action for instituting a suit arises when right to claim the relief which is claimed in the suit arises. Therefore, inquiry has to be made as to when did the petitioner in the present case become entitled to claim the amount. It is not even the petitioner's case that he became entitle to claim the amount only on 6.9.2002 when he demanded the amount. Even the letter dated 6.9.2002 on which reliance is placed by the petitioner shows that the petitioner has been demanding the amount from the respondents for the act done some time before, but the petitioner had not paid. It is obvious that the cause of action for demanding the amount had accrued much before 6.9.2002 and therefore, the Arbitrator, in my opinion, is perfectly justified in holding that the reference made in the year 2003 by the petitioner was barred by the Law of Limitation. In my opinion, reference to the provisions of Section 21 of the Arbitration and Conciliation Act,1996, so far as

accrual of cause of action for referring the matter to arbitration is concerned, is totally irrelevant. The section 21 of the Act determines the date when a reference is deemed to have been made. It has no relevance so far as accrual of cause of action for making a reference is concerned. Taking overall view of the matter therefore, no fault can be found in the Award made by the learned Arbitrator. The petition therefore, has no substance. Hence, the petition fails and is dismissed. The petitioner is directed to pay costs of this petition to the respondents as incurred by the respondents.